

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

UNITED FOOD & COMMERCIAL  
WORKERS UNION, LOCAL 27  
1501 Casho Mill Road, Suite 11  
Newark, DE 19966

Plaintiff,

Civil Case No. 06 - 377

v.

ACME MARKETS, INC.  
75 Valley Stream Parkway  
Malvern, PA 19355

Serve on:  
Corporation Service Company  
2711 Centerville Rd., Suite 400  
Wilmington, DE 19808

Defendant.

\* \* \* \* \*

**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff, United Food & Commercial Workers Union, Local 27 ("Local 27" or "Union"), by counsel, hereby files this Complaint for Declaratory Judgment against Defendant, Acme Markets, Inc., and in support thereof states as follows:

**JURISDICTION AND VENUE**

1. This is an action pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.* Plaintiff requests that the Court determine that a collective bargaining agreement exists between the parties.

2. This action arises under, and jurisdiction is conferred on this Court by Section 301

of the Labor-Management Relations Act of 1973, 29 U.S.C. § 185, *et seq.* (“LMRA”).

Moreover, this action involves an actual controversy between the parties, and this Court is therefore vested by the provisions of the Declaratory Judgment Act with power to render declaratory judgment and grant other relief as requested herein.

3. Venue is proper in this Court pursuant to 29 U.S.C. § 185 as Plaintiff labor organization maintains its offices in and/or its duly authorized officers or agents are engaged in representing or acting for employee members in this district.

### **PARTIES**

4. Plaintiff, Local 27, is an unincorporated labor organization in an industry affecting commerce within the provisions of the LMRA, and maintains offices at 1501 Casho Mill Road, Suite 11, Newark, Delaware 19966.

5. Defendant, Acme Markets, Inc. (“Acme”) is a retail grocery store chain incorporated and existing under the laws of the State of Delaware, with its principal place of business at 75 Valley Stream Parkway, Malvern, Pennsylvania 19355. Acme operates retail grocery stores throughout the State of Delaware.

6. On April 25, 1999, a collective bargaining agreement (“CBA”) covering Acme’s Delaware stores became effective between Acme and the Union. By its terms, that contract expired on July 19, 2003 (the “Expired CBA”).

7. Article XXII of the Expired CBA provided that Acme would make certain health and welfare contributions to the United Food and Commercial Workers Union and Participating Food Industry Tri-State Health and Welfare Fund (“Tri-State Health & Welfare Fund”) on behalf of the bargaining unit employees.

8. The Expired CBA provided, by Side Letter attached as Exhibit III, "Health and Welfare Improvements." One of the improvements agreed upon was special dental benefits to Delaware resident-employees that permitted Delaware resident-employees to utilize the services of Delaware dentists. The dental benefits improvement was agreed upon by the parties because there were no Delaware dentists enrolled as participating dentists in the dental services plan offered and administered by the Tri-State Health & Welfare Fund.

9. On June 9, 2003, negotiations for a new collective bargaining agreement between the parties commenced.

10. During the 2003 negotiations, the parties agreed that the administration of all health and welfare benefits offered to covered employees and their dependents would be transferred from Tri-State Health & Welfare Fund to United Food and Commercial Workers Local 56 Health and Welfare Fund ("Local 56 Health & Welfare Fund" or the "Fund").

11. Negotiations concluded on August 14, 2003 after the parties arrived at an agreement (the "Successor Agreement") for the term of July 19, 2003 to July 19, 2008. The Successor Agreement included within its terms six (6) appendices entitled Exhibits I through VI.

12. The Union presented the terms of the Successor Agreement to its bargaining unit members, and it was ratified on August 19, 2003. Upon ratification, the material terms of the Successor Agreement were implemented by Acme.

13. Under Article 22 of the Successor Agreement, Acme is required to make fixed monthly contributions to the Local 56 Health & Welfare Fund. Acme does not direct its contributions to fund any particular health or welfare benefit. The Trustees of the Local 56 Health & Welfare Fund, in their sole discretion, determine which health and welfare benefits are

provided to Union members and at what level the Fund shall fund the benefits. Acme is not obligated to fund any particular benefit or benefits, nor does it have any role or responsibility in determining what benefits the Fund shall offer or at what level the benefits shall be funded.

14. After August 2003, Local 56 Health & Welfare Fund assumed and continued to provide the special dental benefits to Delaware resident-employees while discontinuing certain other benefits listed in Exhibit III of the Successor Agreement such as vision, life insurance, and prescription drugs.

15. By email dated January 9, 2006, the Union demanded that Acme sign the Successor Agreement. To date, Acme refuses to execute the Successor Agreement claiming that it did not agree to continue in effect the benefits listed in Exhibit III of the Successor Agreement.

16. Nothing in the Successor Agreement requires the parties to negotiate over which health and welfare benefits will be provided by the Local 56 Health & Welfare Fund. The benefits provided by the Fund are determined solely and exclusively by the Trustees of the Fund.

17. Acme has denied and continues to deny the formation and existence of the parties' Successor Agreement, although it has adopted and placed into effect all of the Successor Agreement's material terms.

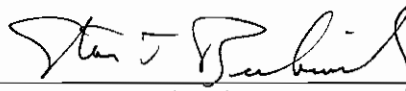
18. Local 27 has no adequate remedy at law because it cannot otherwise compel Acme to sign the Successor Agreement. Only an adjudication and judgment by this Court declaring that a valid, enforceable collective bargaining agreement exists between Acme and Local 27 will provide Local 27 with the relief required under the circumstances.

WHEREFORE, Plaintiff United Food and Commercial Workers Union, Local 17 respectfully requests that this Court:

- A. Declare that the Successor Agreement is a valid and enforceable contract between the parties; and
- B. Grant such other and further relief as this Court deems equitable and just including an award for attorneys' fees and costs.

Prepared by:

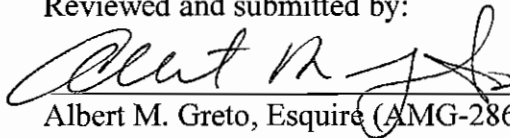
Date: June 2, 2006



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Attorney for Plaintiff  
United Food & Commercial Workers

Reviewed and submitted by:

Date: June 2, 2006



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Attorney for Plaintiff  
United Food & Commercial Workers  
Union, Local 27

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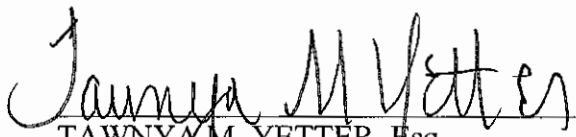
Case #:

**CERTIFICATE OF SERVICE**

I, TAWNYA M. YETTER, Esquire of the LAW FIRM OF ALBERT M. GRETO,  
ESQUIRE, hereby certify that on this 7th day of June, 2006, I have caused to be mailed  
by registered mail, two true and correct copies of the foregoing document:

**COMPLAINT FOR DECLARATORY JUDGMENT**

TO: Corporation Service Company  
For ACME Markets, Inc.  
2711 Centerville Rd., Suite 400  
Wilmington, DE 19808



TAWNYA M. YETTER, Esq.  
1701 Shallcross Avenue, Suite C  
PO Box 756  
Wilmington, DE 19899  
(302) 761-9000



06-377

JS 44 (Rev. 11/04)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<b>I. (a) PLAINTIFFS</b>  <b>(b)</b> County of Residence of First Listed Plaintiff <u>New Castle</u> (EXCEPT IN U.S. PLAINTIFF CASES)  <b>(c)</b> Attorney's (Firm Name, Address, and Telephone Number)	<b>DEFENDANTS</b>  County of Residence of First Listed Defendant <u>Delaware</u> (IN U.S. PLAINTIFF CASES ONLY)  NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.  Attorneys (If Known)
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<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)  <table style="width:100%;"> <tr> <td style="width:50%;">           Citizen of This State <input checked="" type="checkbox"/> 1            Citizen of Another State <input type="checkbox"/> 2            Citizen or Subject of a Foreign Country <input type="checkbox"/> 3         </td> <td style="width:50%;">           DEF <input type="checkbox"/> 1            Incorporated or Principal Place of Business in This State <input type="checkbox"/> 2            Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 3            Foreign Nation <input type="checkbox"/> 6         </td> </tr> </table>	Citizen of This State <input checked="" type="checkbox"/> 1 Citizen of Another State <input type="checkbox"/> 2 Citizen or Subject of a Foreign Country <input type="checkbox"/> 3	DEF <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 3 Foreign Nation <input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)											
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<b>V. ORIGIN</b> (Place an "X" in One Box Only) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
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<b>VI. CAUSE OF ACTION</b> Brief description of cause: <u>Declaratory Judgment - UFCW Local 27 v. Arme Markets</u>	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input type="checkbox"/> No
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<b>VII. REQUESTED IN COMPLAINT:</b>	<b>VIII. RELATED CASE(S) IF ANY</b> (See instructions): JUDGE _____ DOCKET NUMBER _____
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DATE \_\_\_\_\_ SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_